

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES L. CONCA,

Plaintiff,

v.

RJ LEE GROUP INC., ET AL.,

Defendants.

No. 4:15-CV-5017-EFS

**ORDER GRANTING MOTION TO AMEND,
DENYING AS MOOT MOTION TO STRIKE,
AND GRANTING IN PART AND DENYING
WITH LEAVE TO RENEW IN PART
MOTION TO DISMISS**

Before the Court, without oral argument, are Defendants Richard Lee, Sandra Lee, David James, and Patricia James's Motion to Dismiss, ECF No. 4; Defendants' Motion to Strike, ECF No. 17; and Plaintiff James L. Conca's Motion to Amend Complaint, ECF No. 22. The individual Defendants¹ asked the Court to dismiss all claims against them with prejudice. ECF No. 4. Plaintiff opposed the motion to dismiss and filed a declaration "to describe Dr. Richard J. Lee and Mr. David K. James' contacts with Washington State." ECF Nos. 13 & 13-1. Defendants moved to strike Plaintiff's declaration because it sought to introduce factual assertions not in the complaint and not related to personal jurisdiction. ECF No. 17. In response, Plaintiff filed a motion to amend his complaint to incorporate his declaration and to add additional factual allegations regarding his wage claim.

¹ RJ Lee Group, Inc., the corporate Defendant, is not joined in the motion to dismiss, and instead filed an answer to the complaint. ECF Nos. 4 & 5.

1 ECF No. 22. Defendants oppose the motion to amend, arguing that the
2 proposed amended complaint fails to cure the deficiencies raised in
3 Defendants' motion to dismiss and thus amendment would be futile. ECF
4 No. 24. Having reviewed the pleadings and the file in this matter,
5 the Court is fully informed and grants the motion to amend, denies as
6 moot the motion to strike, and grants in part and denies with leave to
7 renew in part the motion to dismiss.

8 **I. MOTION TO AMEND COMPLAINT**

9 **A. Legal Standard**

10 Federal Rule of Civil Procedure 15 governs amendment of
11 pleadings. "A party may amend its pleading . . . [after a responsive
12 pleading is served] only with the opposing party's written consent or
13 the court's leave. The court should freely give leave when justice so
14 requires." Fed. R. Civ. P. 15(a). Given that the purpose of
15 pleadings is "to facilitate a proper decision on the merits," *Conley*
16 *v. Gibson*, 355 U.S. 41, 48 (1957), Rule 15 is to be applied with
17 "extreme liberality," *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d
18 1048, 1052 (9th Cir. 2003) (quoting *Morongo Band of Mission Indians v.*
19 *Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)). Furthermore, formal and
20 burdensome impediments should not be erected during the litigation
21 process. *Id.*

22 The following guidance was provided to district courts by the
23 Supreme Court in *Foman v. Davis*, 371 U.S. 178 (1962):

24 In the absence of any apparent or declared reason--such as
25 undue delay, bad faith or dilatory motive on the part of
26 the movant, repeated failure to cure deficiencies by
amendments previously allowed, undue prejudice to the
opposing party by virtue of allowance of the amendment,

1 futility of amendment, etc.--the leave sought should, as
2 the rules require, be "freely given."

3 *Id.* at 182; see also *Desertrain v. City of Los Angeles*, 754 F.3d 1147,
4 1154 (9th Cir. 2014) ("Five factors are taken into account to assess
5 the propriety of a motion for leave to amend: bad faith, undue delay,
6 prejudice to the opposing party, futility of amendment, and whether
7 the plaintiff has previously amended the complaint.").

8 The Ninth Circuit has clarified that not all of the factors
9 merit equal weight. *Eminence Capital, LLC*, 316 F.3d at 1052; *United*
10 *States v. Webb*, 655 F.2d 997, 980 (9th Cir. 1981); *Hurn Ret. Fund*
11 *Trust of Plumbing*, 648 F.2d 1252, 1254 (9th Cir. 1981). In fact,
12 prejudice to the opposing party is given the most consideration,
13 *Eminence Capital, LLC*, 316 F.3d at 1052, while delay alone is an
14 insufficient reason to deny the motion to amend. *Loehr v. Ventura*
15 *County Cmty. Coll. Dist.*, 743 F.2d 1310, 1319-20 (9th Cir. 1984).
16 "Absent prejudice, or a strong showing of any of the remaining *Foman*
17 factors, there exists a *presumption* under Rule 15(a) in favor of
18 granting leave to amend." *Eminence Capital, LLC*, 316 F.3d at 1052;
19 see *Howey v. United States*, 481 F.2d 1187 (9th Cir. 1973).

20 **B. Analysis**

21 An analysis of the above factors reveals no reason why leave to
22 amend should not be given in this case. Plaintiff's proposed amended
23 complaint incorporates the content of Plaintiff's declaration (§ 21)
24 and adds three paragraphs of allegations (§§ 33-35) but is otherwise
25 identical to Plaintiff's original complaint. Compare ECF No. 22-1
26 with ECF No. 1-2. Plaintiff's amended complaint does not add new

1 claims or defendants. ECF No. 22-1. This is Plaintiff's first
2 request to amend his complaint. See *Desertrain*, 754 F.3d at 1154.
3 There is no evidence that Plaintiff's motion is brought in bad faith
4 or that Defendants will be prejudiced by the amendment. See *id*; ECF
5 No. 24. In fact, Defendants recently received leave to amend their
6 notice of removal, ECF No. 20, so it is equitable that Plaintiff also
7 be given a chance to amend his pleading. The Court does not find that
8 amendment would be futile. See *Desertrain*, 754 F.3d at 1154.
9 Furthermore, Plaintiff has not unduly delayed his motion—this case was
10 filed in February 2015 and discovery has not yet commenced. See *id*.
11 In sum, the Court finds that the *Foman/Desertrain* factors weigh in
12 favor of amendment and grants Plaintiff's motion to amend.

13 Plaintiff is to promptly file an amended complaint. For clarity
14 and the ease of the parties and the Court going forward, **Plaintiff is**
15 **not to incorporate his declaration by reference but rather is to**
16 **incorporate the allegations contained therein into the complaint**
17 **itself**, in conformance with Federal Rules of Civil Procedure 8 and 10.

18 II. MOTION TO STRIKE

19 Defendants move to strike Plaintiff's Declaration, ECF No. 13-1,
20 arguing that the declaration impermissibly seeks to introduce facts
21 not in the complaint to avoid a finding that Plaintiff has not stated
22 a claim. ECF No. 17. In light of the Court's ruling above permitting
23 Plaintiff to amend his complaint to incorporate the contents of his
24 declaration, Defendants' motion to strike is denied as moot.

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1 **III. DEFENDANTS' MOTION TO DISMISS MRS. LEE AND MRS. JAMES**

2 Defendants Jane Doe (Sandra) Lee and Jane Doe (Patricia) James
3 are named in the caption of the complaint, but neither the complaint
4 nor the proposed amended complaint contains allegations against them.
5 Complaint, ECF No. 1-2; Proposed Amended Complaint, ECF No. 22-1.
6 Additionally, there is no allegation that Mrs. Lee or Mrs. James has
7 any contact with Washington, and there is no evidence that Mrs. Lee
8 and Mrs. James were personally served with process. *See Int'l Shoe v.*
9 *Washington*, 326 U.S. 310, 316 (1945) (requiring that a defendant have
10 "minimum contacts" with a jurisdiction in order for the jurisdiction
11 to have personal jurisdiction over the defendant); Fed. R. Civ. P.
12 4(m) (providing the time limit for service of process). Therefore,
13 the Court will dismiss the claims against them unless it finds that
14 they have been properly included in this suit, subjected to the
15 Court's jurisdiction, and served as part of their respective marital
16 communities.

17 The Court finds that Mrs. Lee and Mrs. James are not properly
18 included in this suit solely as members of a marital community. Dr.
19 and Mrs. Lee and Mr. and Mrs. James are domiciled in Pennsylvania,
20 which is not a community property state. *Everson v. Everson*, 264 Pa.
21 Super. 563, 572 (Pa. Super. Ct. 1979) ("[T]he concept of 'community
22 property' is repugnant to the law of Pennsylvania"). The fact that
23 Dr. Lee and Mr. James undertook business acts in Washington does not
24 mean they are members of a marital community under Washington law,
25 particularly when there are no allegations that their spouses took any
26

1 action in or have any connection to Washington.² See *Powell v. Am.*
2 *President Lines, Ltd.*, No. C08-1606MJP, 2009 WL 367209, at *1-2 (W.D.
3 Wash. Feb. 10, 2009) (unpublished) (holding that the defendant's
4 spouse could not be sued solely to access any community property
5 because the defendant and his wife resided in a non-community-property
6 state and so possessed no community property).

7 There are also no allegations that the Lees or the Jameses
8 possess any assets in which Washington has a significant interest that
9 could be community property. See *Brookman v. Durkee*, 46 Wn. 578, 583
10 (1907) ("[W]e are clear that personal property acquired by either
11 husband or wife in a foreign jurisdiction, which is by law of the
12 place where acquired the separate property of one or the other of the
13 spouses, continues to be the separate property of that spouse when
14 brought within this state."); *G.W. Equip. Leasing, Inc. v. Mt.*
15 *McKinley Fence Co., Inc.*, 97 Wn. App. 191, 196-97 (Wn. Ct. App. 1999)
16 ("[W]hen management of community property is at issue, the state with
17 the most significant interests is typically the state where the
18 spouses reside."). Because there are no claims against them
19 individually and because there is no marital community that may be
20 sued or community property that may be sought, the Court dismisses all
21 claims against Mrs. Lee and Mrs. James without prejudice and grants
22 the motion to dismiss in this regard.

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25 ² The complete lack of allegations that Mrs. Lee and Mrs. James personally
26 availed themselves of the laws of Washington also raises a significant
concern that the Court lacks personal jurisdiction over them. See *Burger*
King Corp. v. Rudzewicz, 471 U.S. 462, 472-75 (1985).

1 **IV. REMAINDER OF DEFENDANTS' MOTION TO DISMISS**

2 Because the Court grants Plaintiff leave to amend his complaint,
3 the remainder of Defendants' motion to dismiss is denied with leave to
4 renew. If, after reviewing Plaintiff's amended complaint, Defendants
5 wish to renew their motion to dismiss, they may do so. However, their
6 motion must identify with specificity which portions of the amended
7 complaint Defendants seek to dismiss and articulate the legal bases
8 for doing so.

9 **V. REMINDER TO THE PARTIES**

10 The Court notes that the motions practice thus far in this
11 litigation has not been the most efficient use of the parties' and the
12 Court's resources. Twice already a motion has been briefed and then a
13 subsequent motion to amend has obviated all or part of a decision on
14 the prior motion. The parties are encouraged to confer with each
15 other and to act consistent with Local Rule 83.1(k) to move the
16 litigation forward efficiently.

17 **VI. CONCLUSION**

18 Accordingly, **IT IS HEREBY ORDERED:**

- 19 1. Plaintiff's Motion to Amend Complaint, **ECF No. 22**, is
20 **GRANTED.** Plaintiff is to promptly file an amended
21 complaint that conforms to the requirements set forth
22 herein.
- 23 2. Defendants' Motion to Strike, **ECF No. 17**, is **DENIED AS**
24 **MOOT.**
- 25 3. Defendants' Motion to Dismiss, **ECF No. 4**, is **GRANTED IN**
26 **PART** (all claims against Mrs. Lee and Mrs. James dismissed

1 without prejudice) and **DENIED IN PART WITH LEAVE TO RENEW**
2 (remainder).

3 **4.** All claims against Jane Doe (Sandra) Lee and Jane Doe
4 (Patricia) James are **DISMISSED** without prejudice.

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
6 Order and provide copies to all counsel.

7 **DATED** this 21st day of April 2015.

8
9 s/Edward F. Shea
EDWARD F. SHEA
10 Senior United States District Judge
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